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JAMES H. McKENNEY,
Clerk

No. 246

U. S. SUPREME COURT

October Term, 1903.

CHARLES H. SHAW, Trustee:
The Union Light, Heat and Power Co.,
The Suburban Electric Co.,
Appellants,

vs.

THE CITY OF COVINGTON, et al.,
Defendants in Error.

MOTION TO ADVANCE.

F. J. HANLON,
City Solicitor.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

Chas. H. Shaw, Trustee:
The Union Light, Heat and Power Co.,
The Suburban Electric Co.,
Appellants.
vs.
The City of Covington *et al.*,
Defendants in Error.

No. 649.

MOTION TO ADVANCE.

The City of Covington, Kentucky, and William A. Johnson, Mayor of the City of Covington, now come and move the Court that the above styled cause be advanced for hearing at as early a date as may be convenient and proper under the rules of court.

The matter involved in said cause is the claim of the City of Covington, Kentucky, of the right to construct a municipal electric light plant to light the streets and public buildings of said city.

The right to construct said plant is claimed by said city under and by virtue of its charter (charters of cities of the second class in Kentucky), and being a certain act of the Kentucky Legislature, approved March 19th, 1894.

Said act in part provides:

> "The General Council shall have power by ordinance to provide by themselves or through others for lighting the streets, public places and buildings, and furnishing light to the inhabitants, and to regulate the quality and quantity of the light, and the method, time of, and appliances for furnishing the same; to compel any and all light companies or persons furnishing light to change and re-locate gas mains, or pipes, or poles, electric wires and conduits for electric wires, place those above the surface of the ground, under it, to change the method of conveying the light, and generally to do things conducing to the safety and comfort of the inhabitants in the premises."

During the year 1900 the City of Covington desired to erect a municipal electric light plant to light the streets and public buildings of said city. The question "as to whether or not the city should issue bonds to the amount of $75,000.00 for the construction of said light plant" was submitted to a vote of the people during said year, and said proposition was voted upon favorably by a majority of the citizens of Covington, and the General Council of said city was about to issue said bonds when it was enjoined by the appellants herein, and prevented from issuing said bonds and constructing said light plant.

The right of the City of Covington to construct said municipal electric light plant is resisted by the appellant, the Union Light, Heat and Power Company, claiming that it has the exclusive franchise and privilege of furnishing electric light to said city until April 22d, 1907.

Said Union Light, Heat and Power Company claims that it received said exclusive franchise by virtue of a consolidation effected with a constituent company, known as the Covington Electric Light Company. Said Covington

Electric Light Company was incorporated by an act of the Legislature of Kentucky, approved April 22d, 1882, and said company was given the exclusive right to furnish electric light to the City of Covington, and its inhabitants, for a period of twenty-five years from said date. Subsequently said Covington Electric Light Company, together with two other constituent electric light companies, in 1894, consolidated their interests and formed a new corporation, known as the Suburban Electric Company, and by the articles of incorporation of said Suburban Electric Company, the said Covington Electric Light Company attempted to pass to said Suburban Electric Company (by virtue of said consolidation) the exclusive privilege which was granted to it in 1882 as aforesaid. Subsequently the said Suburban Electric Company sold out its property interests to the North American Light Company (a company incorporated under the laws of New Jersey), and by said sale attempted to assign and transfer to said North American Light Company the exclusive privilege aforesaid which was granted to the said Covington Electric Light Company in 1882. Subsequently the said North American Light Company attempted to assign, transfer and sell said exclusive franchise aforesaid (which was granted originally to the Covington Electric Light Company) to the appellant herein, the Union Light, Heat and Power Company, the real party in interest herein, which is now claiming the exclusive right and privilege to furnish electric light to the City of Covington and the inhabitants thereof, until the year 1907.

This case was tried upon its merits in the United States Circuit Court below, and on the 14th day of October, 1902, judgment was rendered dismissing said bill of complaint, and dissolving said injunction. The appellants prayed an appeal to the United States Circuit Court of Appeals for the Sixth

District, and asked for an order continuing the injunction in force pending an appeal to said Circuit Court of Appeals. The appeal was granted, and said injunction continued in force pending said appeal to said Circuit Court of Appeals over the objection of the appellee herein, City of Covington. Subsequently the appellants appeared in the Circuit Court of Appeals and dismissed said appeal, and procured another appeal from the Judge of the Circuit Court below to this court, and also procured an order from the Judge of the Circuit Court below, continuing the injunction in force pending said appeal to this honorable Court.

The reasons for this application are: That the matters involved herein are of great public interest to the State of Kentucky, and the citizens and taxpayers thereof. It is important to all municipalities in the State of Kentucky, and the citizens and taxpayers thereof, and to all private corporations, that the law as to exclusive franchises and privileges in Kentucky should be speedily settled.

Wherefore the appellees, City of Covington, and William A. Johnson, Mayor, pray that this cause be advanced and heard at as early a date as may be convenient and proper under the rules of court. The injunction is still in force and effect, preventing appellee city from issuing said bonds and constructing said municipal electric light plant.

F. J. HANLON,
City Solicitor and Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1902.

No. 649.

CHAS. H. SHAW, TRUSTEE, Etc., Appellant.

vs.

THE CITY OF COVINGTON, et al., Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF KENTUCKY, AT COVINGTON, TO THE SUPREME COURT OF THE UNITED STATES.

Motion to Dismiss Appeal for want of Jurisdiction.

The appellees, City of Covington, and Wm. A. Johnson, Mayor of the City of Covington, now come and move the court to dismiss the appeal granted herein, by the United States Circuit Court for the Eastern District of Kentucky, on December 23, 1902, for the following reasons:

The question at issue herein is, whether or not the appellant has the exclusive franchise of furnishing electric light to the City of Covington. The City of Covington desired to build a municipal electric light plant to light the streets and public buildings of the city. The question was submitted to the voters of the city, as to whether or not the city should issue bonds for the erection of said light plant. Said proposition, to issue said bonds, carried by a majority of the votes of the citizens of Covington, and the general council of said city was about to issue said bonds when it was en-

joined by the appellant herein, as trustee of the Suburban Electric Company, said company claiming the exclusive privilege of furnishing electric light to the city, until April 22, 1907.

Said Suburban Electric Company claims that it received said exclusive right by virtue of the consolidation with a constituent company called The Covington Electric Light Company. Said Covington Electric Light Company was incorporated by an act of the Legislature, approved April 22, 1882, and said company was given the exclusive right to furnish electric light to the City of Covington, and its inhabitants, for a period of twenty-five years. Said Covington Electric Light Company, together with two other constituent electric light companies, in 1894, consolidated their interests under the name of The Suburban Electric Company, and said Covington Electric Company attempted to pass, by virtue of said consolidation, the exclusive privilege which the Legislature had granted to it in 1882.

This case was tried upon its merits in the United States Circuit Court below, and judgment was rendered dismissing the petition and dissolving the injunction, on the 14th of October, 1902, and the appellant herein prayed an appeal to the United States Circuit Court of Appeals, for the Sixth District, which appeal was granted, and on the same day the appeal bond was fixed at one thousand ($1,000) dollars, and an order entered continuing the injunction, heretofore granted, in force, pending said appeal.

On the same day a petition for appeal was filed by the appellants, and an assignment of errors was also filed on the same day, and on October 14, 1902, a bond on appeal to the Circuit Court of Appeals was filed, all of which is set forth in the record herein, and on the same day, to-wit: October 14, 1902, citation issued and was served upon the appellees

herein, admonishing them to appear at a session of the United States Circuit Court of Appeals, for the Sixth Circuit, to be holden at the City of Cincinnati, at said circuit, on the 12th day of November, 1902, and to show cause, if any there be, why the judgment rendered against the plaintiff in error should not be corrected.

On November 10, 1902, an extension of time of thirty days was granted by the Circuit Court to allow the plaintiffs in error to file the transcript of the proceedings in the Circuit Court of Appeals for the Sixth District, and on November 11, 1902, the citation issued herein on October 14th, was returned and filed, showing service upon the appellees herein.

Said transcript of the proceedings of the United States Circuit Court, was taken by the appellants herein, and filed in the United States Circuit Court of Appeals, for the Sixth Circuit, and on December 15, 1902, a certified copy of an order of the Circuit Court of Appeals for the Sixth Circuit was filed in the United States Circuit Court, for the Eastern District of Kentucky. Said copy was and is in words and figures as follows, and was entered by the Circuit Court of Appeals on December 13, 1902:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

CHAS. H. SHAW, TRUSTEE IN BANKRUPTCY OF THE SUBURBAN ELECTRIC COMPANY,

VS.

THE CITY OF COVINGTON, AND WM. A. JOHNSON, MAYOR OF THE CITY OF COVINGTON.

In this cause the motion heretofore entered by the appellant for an order dismissing this appeal for lack of jurisdiction thereof in this court, and without prejudice and for

leave to withdraw the record herefrom, came on this day to be heard, and was argued by counsel for the appellant in support thereof, and by counsel for appellee, in opposition thereto, and upon consideration thereof, it appearing to this court, that the said appeal was taken to this court by inadvertence, it is ordered that so much of said motion as prays for leave to dismiss said appeal be granted, and the said appeal is therefore now dismissed, and it appearing that the transcript on said appeal has now been filed, and the cause docketed in this court, it is further ordered that so much of said motion as prays for leave to withdraw the record from this court be denied.

And it is also further ordered that the motion herein filed by the appellee on the 11th day of December, instant, for an order affirming the decree of the Circuit Court in this cause, be denied.

On December 13, 1902, another appeal was granted to appellant by the United States Circuit Court for the Eastern District of Kentucky, to the Supreme Court of the United States, and it was ordered that the injunction heretofore granted remain and continue in full force and effect, pending said appeal by complainant to the Supreme Court of the United States. This appeal was granted after the Circuit Court of Appeals had dismissed the appeal which was pending in said court.

On December 19, 1902, the appellees filed in the court below a motion to set aside the order entered as of December 13, 1902, continuing the injunction in force and effect, pending the appeal by complainant to the Supreme Court of the United States and to reconsider the order granting an appeal to the Supreme Court, and on December 23, 1902, said court overruled said motion, and on the same day,

to-wit; December 23, 1902, said Circuit Court below granted appellant an appeal to the Supreme Court of the United States, and fixed the appeal bond at one thousand ($1,000) dollars.

Appellees now come and move the court to dismiss the appeal herein, because the United States Circuit Court for the Eastern District of Kentucky, has no power or authority in law to grant an appeal to this honorable court, after granting an appeal to the United States Circuit Court of Appeals, for the Sixth District, and said appeal being there dismissed.

F. J. HANLON,

Attorney for Appellees.